

HIGH COURT FOR THE STATE OF TELANGANA

CIVIL REVISION PETITION No.129 OF 2024

Yelaboina Kumar, S/o Komuraiah,
Aged 49 years, Occ: Agriculture,
R/o Shivaji Nagar, Raghunathapally Mandal
Jangaon District and another

....Petitioner

VERSUS

Guvva Jai Hind, S/o Venkataiah,
Age:53 yrs, Occ: Advocate,
R/o 8-104/56, Raghunathapally(V) & (M),
Jangaon District and others.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 15.03.2024

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

J. SREENIVAS RAO, J

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! Counsel for Petitioner : Sri C.Shanmukh Rao

^ Counsel for Respondents : Sri M. Ratan Singh,

< GIST:

> HEAD NOTE:

? CITATIONS:

1. (2020) 2 SCC 394
2. (2021) 20 SCC 210
3. 2022 SCC OnLine SC 1026

HON'BLE SRI JUSTICE J. SREENIVAS RAO
CIVIL REVISION PETITION No.129 of 2024

ORDER:

This Civil Revision Petition is filed invoking the provisions of Article 227 of Constitution of India. Aggrieved by the orders dated 04.10.2023 passed by Principle Junior Civil Judge, Jangaon in I.A.No.783 of 2022 in O.S.No.515 of 2021, granting leave to defendant No.1 for filing counter claim in the suit.

2. The revision petitioners are plaintiffs and respondent No.1 is the defendant No.1 in the Suit O.S.No.515 of 2021. For the sake of convenience the parties herein are referred to as they arrayed in the suit before the Court below.

3. **Brief Facts of the case:**

3.1 Plaintiff filed suit in O.S.No.515 of 2021 on the file of Principle Junior Civil Judge at Jangaon seeking perpetual injunction restraining the defendants from interfering with the suit schedule property i.e., an extent of Acs.7.36 guntas in Survey No.195/2, 196/2, 195/1/2 and in Survey No.196/1/2, situated at Kanchanapally Revenue

Village, Raghunathpally Mandal, Jangaon District. Plaintiffs in the said suit stated that they are the owners and possessors of Scheduled property and the same was purchased from defendant No.2 under Sada Sale deed dated 02.04.1992. Pursuant to the same, their names were mutated in the revenue records and pattadar pass books and title deeds were issued in their favour. Along with the said suit plaintiffs filed I.A.No.677 of 2021 under Order XXXIX Rule 1 and 2 R/w Section 151 of Civil Procedure Code, 1908('CPC' for brevity) seeking temporary injunction. Initially the Court below granted ad-interim injunction. In the said application defendant Nos.2 and 3 were remained *ex-parte*. The Court below after considering the contentions of plaintiffs and defendant No.1, made the interim injunction order granted earlier absolute and allowed the application I.A.No.677 of 2021 by its order dated 23.12.2024.

3.2. While things stood thus, defendant No.1 filed application I.A.No.783 of 2022 invoking the provisions of Order VIII Rule 9 R/w Section 151 of CPC seeking leave for filing counter claim. In the said application defendant No.1 stated that under the guise of interim injunction

order the plaintiffs are interfering with his property to an extent of Acs.3.20 guntas in Survey No.197/1/CS³ and the said land is nothing to do with the Schedule property claimed by the plaintiffs. He further stated the property claimed in the counter claim is the Government Assigned land for which he had been granted assignment patta as he is landless poor person and since then he is in possession and enjoyment of the said property and Revenue authorities issued pattadar passbook and title deed in his name. When the plaintiffs are trying to interfere with the said property, he lodged a complaint before SHO, Ragunathpally and the same was registered. The Court below after considering the contentions of respective parties and also considering the judgment of Hon'ble Apex Court in **Ashok Kumar Kalra Vs. Wing CDR.Surendra Agnihotri and others**¹ allowed the I.A.No.783 of 2022 by its order dated 04.10.2023. Aggrieved by the said order, plaintiffs filed the present Civil Revision Petition.

4. Heard Sri C.Shanmukh Rao, learned counsel for Revision petitioners/plaintiffs and Sri M. Ratan Singh,

¹ (2020) 2 SCC 394

learned counsel for respondent No.1/defendant No.1. Learned counsel for the petitioners submits that respondent Nos.2 and 3 are not necessary parties in this revision petition.

5. Learned counsel for the petitioners submits that application filed by the defendant No.1 seeking leave to file counter claim is not maintainable under law on the ground that the defendant No.1 filed written statement on 10.11.2021 and after expiry of more than six months filed counter claim and defendant No.1 ought to have filed counter claim along with the written statement, especially defendant No.1 has not mentioned the allegations made in the counter claim in the written statement and in the absence of any pleading in the written statement defendant No.1 is not entitled to file counter claim. He further contended that the interim injunction order dated 23.12.2021 granted by the Court below in I.A.No.677 of 2021 has become final and defendant No.1 has not questioned the said order and the same is binding upon him. The Court below without considering the above aspects allowed the application. He further contended that the Court below has not properly appreciated the principle

laid down in **Ashok Kumar Supra**. He also contended that there is no cause of action for filing counter claim and the defendant No.1 has to file independent suit. In support of his contention he relied upon the judgment of Hon'ble Apex Court in **Nitaben Dinesh Patel Vs. Dinesh Dayabhai Patel**² and **Satyender and others Vs. Saroj and others**³.

6. *Per contra*, learned counsel appearing on behalf of respondent No.1 contended that respondent No.1 is the absolute owner and possessor of land to an extent of Acs.3.20 guntas in Survey No.197/1/८३ and the same was assigned in his favour by the Government and the suit scheduled property claimed by the plaintiffs to an extent of Acs.3.20 guntas in Survey No.195 and 196 is nothing to do with the property of defendant No.1 and under the guise of interim injunction order dated 23.12.2021, the plaintiffs are interfering with the property of defendant No.1.

6.1 He further contended that the Court below while granting temporary injunction specifically held that the

² (2021) 20 SCC 210

³ 2022 SCC OnLine SC 1026

temporary injunction is operating in respect of the property claimed by the plaintiffs to protect their property and further held that it does not give any sanction for the plaintiffs to encroach upon the land of the others. In spite of specific observation made by the Court below, the plaintiffs are interfering with the property of defendant No.1. In those circumstances, defendant No.1 had rightly filed counter claim invoking the provisions of Order VIII Rule 6-A of C.P.C to protect his property seeking perpetual injunction restraining the plaintiffs from interfering with his property i.e., 3.20 guntas covered by Survey No.197/1/ఉం and the Court below after considering the contentions of the respective parties and provisions of Order VIII Rule 6-A of C.P.C and also by duly considering the principle laid down by the Hon'ble Apex Court in **Ashok Kumar Supra** rightly allowed the I.A. He also contented that as per the provisions of Order VIII Rule 9 of CPC there is no time limit fixed for filing counter claim.

7. Having considered the rival submissions made by respective parties and after perusal of material available on record it reveals that plaintiffs filed suit for perpetual injunction restraining the defendants from interfering with

the plaint scheduled property to an extent of Acs.7.36 in Survey No.195/2, 195/1/2, 196/2 and 196/1/2 and they are claiming the rights over the said property basing on the ordinary sale deed dated 02.04.1992 said to have been executed by defendant No.2 and also basing on the revenue entries and pattadar passbooks and title deeds. Whereas defendant No.1 is claiming rights over the property to an extent of Acs.3.20 guntas in Survey No.197/1/೯ basing on the assignment patta granted by the Government and also basing on the revenue entries and pattadar passbooks and title deeds.

8. It appears from the records that the Court below while allowing the I.A.No.677 of 2021 on 23.12.2021 granted ad-interim injunction wherein specifically observed that the relief granted in favour of the plaintiffs protects their property from illegal interference and it does not give any sanction for them to encroach upon the land of others and the said order is continuing and binding upon the parties. The specific claim of defendant No.1 is that under the guise of above said temporary injunction order, the plaintiffs are interfering with his property and to protect his property he is entitled to seek the relief of

perpetual injunction sought in the counter claim instead of filing independent suit to avoid multiplicity of proceedings.

9. It is very much relevant to mention here that:

(i) whether the property claimed by the defendant No.1 in the counter claim and the property claimed by the plaintiffs in the suit are one and same or different, (ii) Whether the identity of the property is in dispute or not that has to be adjudicated during the course of trial. Similarly, defendant No.1 in the absence of counter claim also he is entitled to file independent suit to protect his property i.e., scheduled property which was mentioned in the counter claim. However, it is settled principle of law that to avoid multiplicity of proceedings and to save the valuable time of the Court as well as the parties, the defendants are entitled to file counter claims as per the provisions of CPC, if the parties satisfy the ingredients as mentioned under Order VIII Rule 6-A of CPC.

10. In the case on hand, defendant No.1 filed application I.A.No.783 of 2022 seeking to grant leave for filing counter claim even before framing of issues in the suit. As per the

records it reveals that the suit is posted for written statement of defendant Nos.2 and 3 only.

11. In ***Ashok Kumar supra***, larger Bench of Hon'ble Apex Court while considering the provisions of Order VIII Rule 6-A of CPC specifically held that defendants are permitted to set up any right or claim against the plaintiff's claim, provided, the cause of action arises before or after the suit's filing but before the defendant delivers their defense. While there's no explicit time limit for filing a counterclaim, it must adhere to the limitations outlined in the Limitation Act, 1963. The purpose of introducing Rule 6-A is to prevent multiple proceedings and ensure disputes are resolved conclusively. Allowing delayed counterclaims could undermine this objective and lead to a miscarriage of justice. Therefore, courts are entrusted with the discretion to consider various factors, including the period of delay, prescribed limitation period, reason for the delay, similarity of cause of action, prejudice to the opposite party and the overall circumstances of the case. However, counterclaims cannot be entertained after the framing of issues or substantial progress in the suit, as

this would be detrimental to the principle of expeditious justice.

12. In ***Nitaben Dinesh Patel supra***, husband filed OP seeking divorce invoking the provisions of Section 13 of Hindu Marriage Act before family Court. During the course of trial wife filed application seeking amendment of counter/written statement of pleading stating that when the marriage between both the parties is subsisting, her husband married another women and the said marriage is void. Along with the amendment application, wife filed counter claim. That family Court allowed the application to the extent of amendment of written statement/counter and rejected the relief of counter claim. Aggrieved by the same, wife filed appeal before Hon'ble High Court of Gujarat and the same was allowed. Aggrieved by the same, husband filed SLP, Hon'ble Apex Court while considering the principle laid down by the Hon'ble full bench judgment in ***Ashok Kumar supra*** held that the parties has to file counter claim before commencing of trial and allowed the SLP by setting aside the order passed by the High Court and confirmed order of the family

Court. However, liberty is granted to wife to file substantive suit or any other remedy available under law.

13. Hence, the contention raised by the learned counsel for the petitioners that defendant No.1 has to file independent suit and counter claim filed by him is not maintainable under law relying upon the above said judgment is not tenable under law. It is already stated “*supra*” that in the case on hand, the suit is posted for filing written statement of defendant Nos.2 and 3 only and the issues were not at framed. Hence the application filed by defendant No.1 for grant of leave to file counter claim is in accordance with principle laid down by the Hon’ble Apex Court as stated “*supra*”.

14. In so far as other the contention raised by learned counsel for the petitioners that there is no cause of action and counter claim can be filed against claim of the plaintiffs only by relying upon the principle laid down in ***satyendra supra*** is also not applicable to the facts and circumstances of the case, on the sole ground that whether the scheduled property claimed by the plaintiff in the suit and the property claimed by defendant No.1 in

the counter claim is one and same or not, whether identification of the property is in dispute, whether the plaintiffs by taking shelter under the guise of interim injunction order granted in I.A.No.677 of 2021 dated 23.12.2021, interfering with the property of defendant No.1 is true or not, all these are disputed questions of facts and the same has to be adjudicated and determined after full fledged trial. It is also relevant to mention here that the defendant No.1 in his counter claim specifically pleaded that cause of action arises for filing counter claim in para 3.

15. In so far the contention raised by the learned counsel for respondent No.1 that as per the provisions of Order VIII Rule 9 of CPC, defendant can file counter claim at any point of time is also not tenable under law as per the dictum laid down by the Hon'ble Apex Court in **Ashok Kumar supra** and **Satyendar supra**.

16. The other contention raised by the learned counsel for petitioners that defendant No.1 in the absence of any pleading in the written statement filed counter claim with new grounds and the same is not permissible under law is

also not tenable on the sole ground that defendant No.1 in his written statement in Para 10(a) specifically pleaded that he is claiming Acs.3.20 guntas in Survey No.197/1/८३ by virtue of the assignment patta granted by the Government and also basing upon Revenue entries, and further stated that under the guise of interim injunction order dated 23-12-2021 the plaintiffs are interfering with the above said property. Defendant No.1 pleaded the very same facts in the counter claim.

17. For the foregoing reasons, this Court does not find any illegality or irregularity or jurisdictional error to interfere with the impugned order dated 04.10.2023 passed by the Court below to exercise supervisory jurisdiction conferred under Article 227 of Constitution of India.

18. Accordingly, the Civil Revision petition is dismissed. However, the plaintiffs are entitled to file written statement/objections to the counter claim filed by the defendant No.1 by raising all the grounds which are available under law and the Court below is directed to consider the same and pass orders on merits

uninfluenced by any of the observations made in this order or in the impugned order. No costs.

In view of the dismissal of the Civil Revision Petition interlocutory applications pending, if any shall stand closed.

JUSTICE J. SREENIVAS RAO

15th March, 2024

Note: L.R.Copy to be marked: 'Yes'

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